

**Revised Codes, Construction of Section 5177. Construction of Section 5177, Revised Codes.**

Section 5177, is not repealed by Section 8098.

January 25, 1916.

Hon. E. C. Kurtz,  
County Attorney,  
Hamilton, Montana.

Dear Sir:

I am in receipt of your communication under date the 21st instant, submitting the question as to whether Section 5177, Revised Codes of Montana, 1907, is now in force and effect. You state that in view of Section 8098, Revised Codes of 1907, it is your opinion that said section is not now in force and effect.

Section 8098 by its terms is intended to be effective only as to offenses initiated after twelve o'clock of the day on which the Code was prescribed to take effect. Stated in another way, that section provides that crimes committed or begun previous to the taking effect of the Code, should be punished under the law in force when the act was commenced or committed, and that acts begun or committed after the Code went into effect, were to be punished as provided by the Code. The legislature did not intend by this section to abrogate its right to prosecute but merely obviated any difficulty which might arise upon the question of an ex post facto law. It is true that Section 5177 was an Act of 1895, but it was nevertheless included and made a part of the Code of 1907, not simply by being put in as a part of the Code, but by express enactment. Section 3562 is in part as follows:

"The said four codes, and all amendments thereof, adopted by the fourth session of the legislative assembly of the State of Montana, shall go into force and effect at 12 o'clock noon on the first day of July, A. D. eighteen hundred and ninety-five, and the same, together with the acts of the third and fourth sessions of the legislative assembly, shall constitute the public statutes of Montana. And all other statutes of this state of a general nature existing and in force theretofore, that is, prior and up to the time designated for the said codes to take effect, are hereby repealed, abrogated and superceded, unless continued in force by incorporation into said codes, and this repeal provision shall take effect at the time said codes go into force and effect as aforesaid, subject, however, to the following conditions:"

I am of the opinion, therefore, that Section 5177, of the Revised Codes of Montana, 1907, is now in force and effect.

Yours very truly,

J. B. POINDEXTER,

Attorney General.